IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.692 OF 2007
IN
NOTICE OF MOTION NO.2369 OF 2007
IN
L.C. SUIT NO.2527 OF 2007

M/s. Volkart Fleming Shipping ..Appellants
(Plaintiffs)

Versus

1. The Municipal Corporation of Greater Mumbai

2. Arkay Green Valley Hills Pvt.Ltd.

3. Raj Land Consultants & Developers Pvt. Ltd.

4. Smt. Shraddha Rajendra Parikh

5. Miss Aasmine Rajendra Parikh

6. Mr. Chirag Rajendra Parikh

7. Sisodia Canning (P) Ltd. .. Respondents
(Orig.Defendants)

Shri Anil C. Singh i/b. Shri D.R. Shah for the Appellant
Smt. Geeta Jogalekar for the Respondent No.1-BMC
Shri R.J.Majra i/b. Shri Madhusudan G. Gawade, for the Respondent Nos.2 to 7.

CORAM : S.R. SATHE,J.
DATED : 14/09/2007

ORAL ORDER :-

1. Heard finally at admission stage.

2. The Appellants-original Plaintiffs in suit No.2527 of 2007 have preferred this appeal against the order passed by the Judge, City Civil Court, Mumbai in

Notice of Motion No.2369 of 2007 whereby Plaintiffs' application for temporary injunction restraining defendants from taking action on the basis of notice issued by defendant No.1 Municipal Corporation of Greater Mumbai (hereinafter referred to as MCGB) and demolishing the suit premises was dismissed. For the sake of convenience hereafter the parties shall be referred to as “Plaintiff' and “defendants”.

3. The brief facts giving rise to this appeal are as under :-

Plaintiff is a company registered under the Companies Act. The suit premises situated on the ground floor of the building presently known as 'Shreeji Chambers' situated at Bombay Municipal A-Ward No.3278, Street No.127, 26, 218 at the Junction of Bostain Road and D.N. Road, Fort, Bombay-400023 admeasuring about 2400 sq.fts. is in possession of the Plaintiff as tenant. Initially, the defendant Nos.2 to 6 were the owners of the said property. Presently the defendant No.7 is claiming that he has purchased the suit property. Plaintiffs were in possession of the suit premises since 1960. Initially, the building was consisting of ground floor and four upper floors. However, the upper four floors were demolished as the

same had caught fire and only ground floor was retained. This happened in the year 2001. Thereafter, the defendant Nos.2 to 6 filed suit bearing No.T.E. and R Suit No.271/294/03 in the Court of Small Causes at Bombay against Plaintiff for eviction and claimed the premises on the ground that the property is in dilapidated condition and notice is issued by the Corporation. The said suit is still pending. Some times in May-2007, Plaintiff came to know that the defendant Nos.2 to 6 are taking steps for reconstruction of the suit property and they have also submitted plans to the defendant No.1 Corporation. The Corporation has even granted IOD and as per the condition No.11 of the IOD, the owner has demolished the existing structure after obtaining necessary consent of the tenant.

4. According to Plaintiff, the defendant Nos. 2 to 7 in collusion with defendant No.1 managed to issue notice under section 354 of the MMC Act with a view to evict the Plaintiff. According to Plaintiffs, suit premises are in fact not in ruinous condition. Apprehending that defendants would act upon the notice under section 354 of MMC Act and demolish the suit premises, plaintiff filed the above mentioned suit for declaration that the notice issued by defendant No.1

Municipal Corporation under section 354 of MMC Act is illegal and bad in law and for permanent injunction restraining the defendant from taking action in pursuance of the said notice and demolishing the suit premises.

5. The Plaintiff also filed Notice of Motion and prayed for temporary injunction restraining defendants from taking any action in pursuance of the notice under section 354 of MMC Act.

6. The said Notice of Motion was opposed by the defendant No.1 Municipal Corporation as well as by defendant No.7. The defendant No.7 contended that the suit filed without Notice under section 527 of MMC Act is not maintainable and the suit premises is in very dangerous condition and likely to fall at any time. According to defendant No.7, Plaintiff had also in fact admitted in the suit No.271/294/2003 that the suit premises is in dilapidated condition. The defendant No.7 further contended that considering the delicate and dangerous condition of the suit premises and the fact that there is no electricity and water, Plaintiffs have in fact allotted the suit premises and are not using the same for last about 6 years. The defendant

No.7 further contended that the suit premises had caught fire on 25/01/2007 and certain portion of the suit premises had even collapsed and the fire brigade was called when the said incident took place and even Dy. Chief Officer, Fire Brigade, Mumbai has reported that the suit premises is in dilapidated condition. According to defendant No.7 an independent qualified structural engineer has also certified that the suit premises are in dangerous condition. The defendants, therefore, contended that the Plaintiff suppressed the material fact that the suit premises had caught fire on 25/01/2007 and as such Plaintiffs are not entitled for the discretionary relief of temporary injunction. After hearing the arguments of the learned Advocates of both the sides and perusing documents produced on record, the learned Trial Judge came to the conclusion that the suit premises are in dilapidated condition and the same have become dangerous and likely to fall at any time. He also held that the notice issued under section 354 of MMC Act is legal and valid and the Plaintiffs have failed to make out any prima facie case. According to Trial Judge the balance of convenience was also not in favour of the Plaintiff. Hence, he dismissed the Notice of Motion.

7. The above mentioned order is challenged in the present appeal. In this appeal before me, the learned Advocate for the Appellant has urged 2 points. Firstly, he submitted that when the suit building had caught fire in the year 2001 and at that time, the defendant-Corporation had issued notice under section 354 of MMC Act but they demolished only upper 4 floors and the ground floor was retained. So, it obviously shows that it was not in dangerous condition. Secondly, he canvassed before me that the defendant No.7 is in fact asked to take consent of the tenant before demolishing the existing structure and in order to evict Plaintiffs from the suit premises the defendant Nos.2 to 7 in collusion with defendant No.1 have managed to issue notice under section 354 of MMC Act and there is in fact no legal valid notice for demolishing all the existing ground floor structure. He also submitted that merely because Plaintiffs are not occupying the suit premises that will not give any right to defendants to demolish the same and Plaintiffs are entitled to protect their right of tenancy. He, therefore, submitted that the balance of convenience is in favour of Plaintiff and irreparable loss will be caused to them if temporary injunction as prayed is not granted and defendants are allowed to take action in pursuance

of alleged notice under section 354 of the MMC Act.

8. As against this, the learned advocate for the defendant No.7 strenuously argued before me that the suit premises are in very dangerous condition and likely to fall at any time. Structural engineer has also opined accordingly. Besides this, the Corporation authorities have also observed that suit premises are in dangerous condition and that is why they have issued notice dated 04/05/2007 stating therein that suit premises are in dangerous condition and likely to fall at any time and cause loss of lives and property and directed to demolish the same. The learned Advocate also submitted that the defendant Nos. 2 to 7 are even ready to reserve the same carpet area in the newly constructed building for the allotment of the same to Plaintiffs on their succeeding in the ejectment suit and subject to its decision. He, therefore, submitted that Plaintiffs have failed to make out any prima facie case and the learned Trial Judge has rightly rejected the Notice of Motion. He therefore, submitted that the appeal be dismissed.

9. It is not in dispute that Plaintiffs are the tenants in the suit premises. It is also an admitted

fact that in the year 2001 the suit building had caught fire and at that time, notice under section 354 of MMC Act was issued by the Corporation and the upper 4 floors of the suit building were demolished and the ground floor was retained. The main question to be decided in this appeal is whether the suit premises are in dangerous condition as contended by the defendants or whether the defendants are trying to pull down the structure with oblique motive of evicting Plaintiff.

10. It is not in dispute that the defendant No.1 municipal corporation has issued notice dated 04/05/2007 and called upon the defendant No.7 to demolish the suit structure as the same is in dangerous condition and as per the IOD condition also the same is required to be demolished. The defendants have produced certain photographs on record. From the perusal of the said photographs, it appears that for the entire sealing of the ground floor premises is damaged and propping has been done. That itself shows that the roof or sealing of the ground floor premises is in most dangerous condition. In fact, the very fact that the suit premises are not being occupied by the Plaintiffs also indicate that the same are in dilapidated condition and it is not safe to occupy the same. The

Plaintiffs have not given any sufficient reason for not occupying the suit premises. We can not ignore the fact that Plaintiffs are not in occupation for last 6 years. In the suit filed by the landlords against the Plaintiffs in Small Causes Court even the Plaintiffs have stated that suit premises are in dilapidated condition. Though, an attempt is made at this stage to show that the Plaintiff tenant is ready to carry out the repairs. We can not ignore the fact that if really the premises would have been in repairable condition then certainly Plaintiffs would have called upon the landlord to carry out the necessary repairs but that has not happened.

11. The defendants have produced reports submitted by the structural engineer Ghadiyali and Rawal dated 11/07/2007. Therein they have specifically mentioned that the structure is in dilapidated and dangerous condition and should be pulled down at the earliest before it causes any mishap. It must be noted that Plaintiffs have no where stated that the said report is incorrect or biased. Then it is established that the suit premises were also inspected by the concerned officers of defendant-corporation and they have also noticed the same thing and that is why they issued

notice dated 04/05/2007. When the Corporation has issued such notice under section 354 of MMC Act and there is nothing on record to indicate that concerned authority has exercised its power under section 354 malafide, due weightage has to be given to the said action proposed under section 354 of MMC Act.

12. There is another very important piece of evidence which goes against the Plaintiffs. Defendants have produced the reports submitted by the Dy. Chief Fire Officer, Fire Office, Mumbai. In his report, the concerned officer has observed that some portion of the sealing as well as plaster had given way and fallen on the ground inside closed gala of ground floor structure. The ground floor structure from inside was supported by wooden props everywhere. This report is dated 25/01/2007. It is not the case of the Plaintiff that this report is incorrect. So, due weightage has to be given to this report also. Incidentally, it must be noted that Plaintiffs have also not produced any certificate of the expert structural engineer to show that the suit premises are not in dangerous condition. The reports of the concerned authorities mentioned above and the photographs certainly indicate that the suit premises are in dangerous condition. So, it has to

be held that Plaintiffs have failed to make out any prima facie case for granting temporary injunction as prayed. It must be noted that Plaintiffs have not at all mentioned in their plaint the fact that on 25/01/2007, certain portion of the ground floor premises had collapsed and even fire brigade was called. Suppression of this material fact itself disentitles the Plaintiff from getting discretionary relief in their favour. It must be said that the Plaintiff has not come to the Court with clean hands.

13. Turning to the question of balance of convenience it must be mentioned that power under section 354 of MMC Act is given in public interest. In the instant case, Plaintiffs are in fact not in occupation of the suit premises for last 6 years. So, there is no question of causing any inconvenience or irreparable loss to the Plaintiffs. Besides this, we can not ignore the fact that the defendants have expressed their readiness and willingness to reserve equal area in the newly constructed building and to allot the same to Plaintiff subject to Plaintiff establishing their rights in the suit pending in the Small Causes Court. So, the balance of convenience is also not in favour of the Plaintiff. On the contrary,

if temporary injunction is not granted and the premises are allowed to stand as it is then there is every possibility that it may collapse at any time and cause loss of lives of passersby.

14. In view of above, I do not find any reason to interfere with the order passed by the learned Trial Judge, City Civil Court, Mumbai. Hence, I pass the following order :-

O R D E R

A.O. No.692 of 2007 is dismissed with costs.

(S.R.SATHE,J.)

Heard learned Advocate for the Appellant. He submits that the Appellant desires to challenge the above mentioned order before the superior Court, hence, status-quo granted earlier be continued.

With a view to give opportunity to the appellant to redress his grievance before the superior Court the status-quo granted earlier is to continue for 4 weeks. It is made clear that if in the mean time there is any loss of property or life a result of fall of the suit structure then in that event the Respondent Nos. 2 to 7 shall not be liable for the same and

appellant will be held responsible for the same.

(S.R.SATHE, J)